IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3658 of 2007()

AGAINST THE ORDER IN LP.4/06 IN
CC.488/2005 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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PETITIONER: ACCUSED:

VIJULINE MATHEW, S/O.MATHEW,
PUTHIYAKULANGARA HOUSE, EDAVETTY P.O.,
THODUPUZHA.

BY ADV. SRI.RENJITH B.MARAR
SRI.L.RAJESH NARAYAN
SMT.LAKSHMI.N.KAIMAL

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3658 of 2007

Dated this the 6th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2005, as can be seen from the number assigned to the case originally - C.C.488 of 2005. The petitioner was not available for trial. Therefore reckoning him as an absconding accused, the case against his has been transferred to the list of Long Pending Cases. Coercive processes have been issued against the petitioner. Such processes do chase the petitioner now.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate and apply for bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner then submits that the petitioner was not available in India at the time when cognizance was taken. He was employed abroad. He has now

come on leave. He has to return to his place of employment abroad. He prays that he may be permitted to be represented by counsel in the course of trial.

6. It is for the petitioner to make an appropriate application under Section 205 Cr.P.C and I find no reason why the learned Magistrate in a case like the instant one, where the offence alleged is only under Section 138 of the Negotiable Instruments Act, should not consider the request favourably.

7. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-